

STATE OF MICHIGAN
COURT OF APPEALS

NORTHERN HARVEST FURNITURE, INC.,

Plaintiff-Appellant,

V

DEPARTMENT OF TREASURY,

Defendant-Appellee.

UNPUBLISHED

November 30, 2001

No. 224241

Tax Tribunal

LC No. 00-264659

Before: O’Connell, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from the Michigan Tax Tribunal’s order of dismissal. The Tribunal ruled that it lacked jurisdiction to hear the matter because plaintiff failed to timely file the petition for appeal. We affirm.

Plaintiff argues that it timely appealed the final assessment issued by the Department of Treasury because plaintiff mailed its petition for appeal within the thirty-five day limit set forth in MCL 205.22. The Treasury determined that plaintiff’s petition was not timely filed because it did not receive plaintiff’s petition within the thirty-five day limit. On appeal, we must determine when a taxpayer has “perfected” an appeal under MCL 205.22; upon mailing or upon receipt of the petition.

Our review of the decisions of the Tax Tribunal, in the absence of fraud, is limited to determining whether the tribunal made an error of law or adopted a wrong principle; the factual findings of the tribunal are final, provided that they are supported by competent and substantial evidence. Where, as here, the question involves interpretation of the Tax Tribunal Act, the Tax Tribunal’s construction of the statute is entitled to respectful consideration. [*General Motors Corp v City of Detroit*, 141 Mich App 630, 633; 368 NW2d 739 (1985) (internal citations and quotations omitted).]

We review de novo legal questions involving statutory interpretation. *Oakland County Bd of Co Rd Comm’rs v Michigan Property and Casualty Guaranty Ass’n*, 456 Mich 590, 610; 575 NW2d 751 (1998). The primary goal of statutory construction is to determine and effectuate the intent of the Legislature. *Frankenmuth Mutual Ins Co v Marlette Homes, Inc.*, 456 Mich 511, 515; 573 NW2d 611 (1998). The first step in determining Legislative intent is to review the specific language of the statute. *In re MCI Telecommunications Complaint*, 460 Mich 396, 411;

596 NW2d 164 (1999). If the statute is unambiguous, judicial construction is neither required nor permitted, and the statute must be enforced as written. *Id.* However, if a statute is ambiguous on its face, so that reasonable minds could differ with respect to its meaning, judicial construction of the statutory language becomes appropriate. *Id.*

MCL 205.22 governs a taxpayer's right to appeal a Treasury decision to the Tax Tribunal. The statute provides, in pertinent part:

(1) A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 35 days, or to the court of claims within 90 days after the assessment, decision or order. . . .

(2) An appeal under this section shall be perfected as provided under the tax tribunal act, Act No. 186 of the Public Acts of 1973, as amended, being sections 205.701 to 205.779 of the Michigan Compiled Laws, and rules promulgated under that act for the tax tribunal . . . [MCL 205.22(1),(2).]

MCL 205.22 clearly provides that a taxpayer has only thirty-five days in which to appeal a Treasury order to the Tax Tribunal. However, the statute does not specify the mechanics of how such an appeal must be made. Instead, the statute defers to the Tax Tribunal Act, MCL 205.701 to 205.779, to determine when a taxpayer has "perfected" an appeal.¹ After a thorough review of that act, we conclude that MCL 205.735 sets forth the procedure by which a taxpayer perfects an appeal before the Tax Tribunal. That statutory section begins by describing the procedures for appealing property tax assessment matters. The statute then provides, "in all other matters," the Tribunal's jurisdiction is invoked by the petitioner's "filing a written petition." MCL 205.735(2).²

The question therefore becomes when a petition is deemed to be filed. In *General Motors, supra* at 634, this Court addressed that question, applying the "well-recognized general rule that mailing does not constitute filing." This Court found that, "to be filed, a paper or document must be delivered to and received by the proper officer to be kept on file." *Id.* Therefore, this Court concluded that the term "filing" in MCL 205.735 precluded mailing as sufficient to invoke the Tax Tribunal's jurisdiction. *Id.* at 635. Given this Court's holding in the

¹ Because MCL 205.22 does not specify the procedure for perfecting or filing an appeal, plaintiff argues that this Court must turn directly to the administrative rules promulgated by the Treasury. However, plaintiff's argument ignores the legislative command contained in MCL 205.22, that an appeal shall be perfected as provided under MCL 205.701 to 205.779.

² Plaintiff contends that MCL 205.735(2) is inapplicable to the present case because that statutory section governs only property tax assessment disputes. We disagree. MCL 205.735(2) does describe the procedures for appealing property tax assessment matters. However, the statute then explicitly references "all other matters" being appealed to the Tribunal. MCL 205.735(2). The statute's plain language prohibits a conclusion that it applies only to property tax assessment disputes. Such an interpretation would render the "all other matters" language to be mere surplusage.

General Motors case, we conclude that a petitioner only perfects an appeal under MCL 205.22 when the Tax Tribunal receives the appeal petition.

Plaintiff argues that Treasury rules 205 and 210³ govern the filing of its appeal petition, rather than MCL 205.735(2). Rule 205 provides that an appeal is “commenced by filing a petition with the tribunal within the time periods prescribed by statute.” Further, rule 210(2) provides:

(1) A respondent shall serve and file its answer or take other action as may be permitted by law within 28 days after service of a petition. Failure to serve and file an answer within 28 days after service of a petition may result in the scheduling of a default hearing . . .

(2) An answer, motion, or other document filed or served shall be deemed to be filed upon mailing or upon delivery in person, as provided by rule 2.107 of the Michigan Rules of Court, within the time fixed for filing or service.

(3) All pleadings and other documents required to be filed or served on a day during which the offices of the tribunal are not open for business shall be filed on the next business day.

Plaintiff contends that its appeal petition qualifies as an “other document” under rule 210(2), which shall be deemed filed upon mailing. Giving respectful consideration to the Tribunal’s construction of its own rules and of the Tax Tribunal Act, we conclude that rule 210 does not govern the filing of appeal petitions, but applies to the filing of pleadings after the Tribunal has acquired jurisdiction over a case.

Plaintiff argues, in the alternative, that the Tax Tribunal should have exercised its equitable powers to allow plaintiff’s late appeal. We disagree. In *Curis Big Boy, Inc v Dep’t of Treasury*, 206 Mich App 139, 142-143; 520 NW2d 369 (1994), this Court determined that the Tax Tribunal had no authority to grant a petitioner’s late appeal because the Tribunal was divested of jurisdiction over the matter when the appeal period expired. Likewise, in the present case, we conclude that the Tribunal lacked jurisdiction to consider plaintiff’s late appeal.

Plaintiff cites *Bickler v Dep’t of Treasury*, 180 Mich App 205; 446 NW2d 644 (1989), in support of its argument that the Tax Tribunal may expand its statutorily defined jurisdiction through its “equitable powers.” In *Bickler*, the revenue commissioner mailed a notice to an old and inaccurate address. *Id.* at 210. The Tax Tribunal found that the commissioner complied with MCL 205.28(1)(a) by sending notice to the plaintiff at his “last known address.” *Id.* This Court held that the Tribunal’s decision was unsupported by competent, material and substantial evidence on the whole record, and concluded that “extraordinary facts existed which would justify the Tax Tribunal’s exercise of equity jurisdiction in granting petitioner a delayed appeal.” *Id.* at 210-212. We conclude that *Bickler* is inapposite because that decision did not involve the Tax Tribunal’s jurisdiction over an untimely filed appeal petition.

³ 1999 AC, R 205.1205; 1999 AC, R 205.1210.

Finally, plaintiff argues this Court should exercise its own equitable powers in order to grant plaintiff a late appeal to the Tax Tribunal. However, the Legislature has clearly provided that an assessment, decision, or order of the Treasury, if not properly appealed, “is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack.” MCL 205.22(4). Therefore, we cannot order the Tax Tribunal to review plaintiff’s untimely petition.

Affirmed.

/s/ Peter D. O’Connell

/s/ David H. Sawyer

/s/ Michael R. Smolenski